

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN BARTON,

Plaintiff,

vs.

AMERICA'S LIFT CHAIR, LLC and JOHN
DOE 1-10,

Defendant.

Case No. 3:21-cv-05850-BHS

**DEFENDANT'S ANSWER TO
COMPLAINT**

America's Lift Chairs, LLC ("ALC") through its counsel submits the following Answer to Plaintiff's Complaint ("Complaint"). ALC denies all allegations in the Complaint that it does not expressly admit in this Answer. ALC further denies that it willfully or negligently violated any law, either individually, or collectively with any other individual or entity. ALC responds to the specific allegations in the enumerated paragraphs in the Complaint as follows:

I. BASIS FOR JURISDICTION¹

1. The allegations related to jurisdiction state legal conclusions to which no response is required. In the event a response is deemed to be required, the allegations are denied.

¹ Plaintiff's Complaint does not contain numbered paragraphs. ALC has numbered the allegations and responded to each separately.

1 2. ALC lacks knowledge and information sufficient to admit or deny the allegation
2 regarding where any telephone calls were received.

3 3. ALC lacks knowledge and information sufficient to admit or deny the allegation
4 regarding to whom any telephone number was assigned at the time any such call or message was
5 sent or received and, therefore, denies the same.

6 4. The allegations related what ALC's knowledge was or should have been with
7 respect to reaching into the Western area of Washington state states a legal conclusion to which no
8 response is required. In the event a response is deemed to be required, the allegations are denied.

9 5. The allegations related to the telephone numbers alleged to have been used by ALC
10 state a legal conclusion to which no response is required. In the event a response is deemed to be
11 required, the allegations are denied.

12 6. ALC lacks knowledge and information sufficient to admit or deny the allegation
13 that "all the calls and text messages alleged occurred during the year 2021" because the allegation
14 is vague. ALC therefore denies the same.

15
16
17 **II. THE PARTIES TO THE LITIGATION**

18 7. ALC lacks knowledge and information sufficient to admit or deny the allegations
19 regarding Plaintiff's current residence and, therefore, denies the same.

20 8. ALC denies the allegations in paragraph 8.

21 9. ALC admits it uses the website <https://www.americasliftchair.com/contact-us/>.

22 10. The allegations regarding where ALC may be served is a legal conclusion to which
23 no response is required. In the event a response is deemed to be required, the allegations are denied.
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1 11. The allegations regarding ALC's alleged registered agent and the addresses alleged
2 in the Complaint state a legal conclusion to which no response is required. In the event a response
3 is deemed to be required, the allegations are denied.
4

5 **III. STATEMENT OF CLAIM**

6 12. ALC lacks knowledge and information sufficient to admit or deny the allegations
7 regarding when Plaintiff registered and paid for any specific cellular telephone number and the
8 identity of any primary user of such number. The allegations that any such telephone is a
9 "Protected Computer" is a legal conclusion to which no response is required. To the extent a
10 response is deemed to be required, ALC denies that allegation. ALC lacks knowledge and
11 information regarding the allegations related to the phone's service plan and, therefore, denies the
12 same.
13

14 13. ALC lacks knowledge and information sufficient to admit or deny the allegation
15 that the number at issue was registered on the FTC national do-not-call registry more than 31 days
16 before August 4, 2021 and, therefore, denies the same.

17 14. ALC denies the allegation that Plaintiff never invited or consented for ALC to call
18 Plaintiff for any reason.
19

20 **Call #1**

21 15. ALC lacks knowledge and information sufficient to admit or deny the allegations
22 that Plaintiff answered a call on August 4, 2021 and, therefore, denies the same. ALC lacks
23 knowledge and information sufficient to admit or deny the remaining allegations under the heading
24 "Call #1" and, therefore, denies the same.
25
26

Call #2

16. ALC lacks knowledge and information sufficient to admit or deny the allegations that Plaintiff answered a call on August 5, 2021 and, therefore, denies the same. ALC lacks knowledge and information sufficient to admit or deny the remaining allegations under the heading “Call #2” and, therefore, denies the same.

Call #3

17. ALC lacks knowledge and information sufficient to admit or deny the allegations that Plaintiff answered a call on August 13, 2021 and that a caller made “funny noises and hung up 8 seconds later” and, therefore, denies the same. ALC lacks knowledge and information sufficient to admit or deny the remaining allegations under the heading “Call #3” and, therefore, denies the same.

Call #4

18. ALC lacks knowledge and information sufficient to admit or deny the allegations that Plaintiff answered a call on August 4, 2021 and, therefore, denies the same. ALC lacks knowledge and information sufficient to admit or deny the remaining allegations under the heading “Call #4” and, therefore, denies the same.

ALC is Annoying the Public

19. ALC lacks knowledge and information sufficient to admit or deny the allegations regarding Plaintiff or Plaintiff’s children’s desire or need for a chair and, therefore, denies the same. ALC denies the remaining allegations under the heading “ALC is Annoying the Public.”

Commercial Telephone Solicitors

20. The allegations that fall under the “Commercial Telephone Solicitors” heading are legal conclusions to which no response is required. In the event a response is deemed to be required, the allegations are denied. ALC denies the remaining allegations under the heading “Commercial Telephone Solicitors.”

IV. RELIEF

**Federal Claims
TCPA 47 USC 227**

21. ALC denies that it violated the Telephone Consumer Protection Act, 47 CFR 64.1200 and 47 U.S.C. 227(c).

Washington State Claims

22. ALC denies that it violated RCW 19.158.050.

23. ALC denies that it violated RCW 19.158.110.

24. ALC denies that it violated RCW 19.158.150.

25. ALC denies that it violated RCW 80.36.390(2).

26. ALC denies that it violated RCW 80.36.400(2).

27. ALC denies that Plaintiff is entitled to treble damages, “triple damages” or injunctive relief.

28. ALC denies all allegations in the Complaint not expressly admitted herein and specifically denies Plaintiff is entitled to any of the requested relief and/or judgments.

AFFIRMATIVE AND OTHER DEFENSES

ALC hereby sets forth the following affirmative defenses to the Complaint.

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

Plaintiff's claims fail to the extent the Complaint fails to set forth facts sufficient to state a claim upon which relief may be granted against ALC and fails to state facts sufficient to entitle Plaintiff to the relief sought.

**SECOND AFFIRMATIVE DEFENSE
(Compliance/Good Faith)**

Plaintiff's claims fail to the extent that, at all relevant times with respect to Plaintiff, ALC acted in good faith and complied fully with the Telephone Consumer Protection Act ("TCPA") and RCW 19.158 and 80.36.

**THIRD AFFIRMATIVE DEFENSE
(Proximate Cause)**

Plaintiff's claims fail to the extent Plaintiff's purported damages, which ALC continues to deny, were the direct and proximate result of the conduct of Plaintiff or others.

**FOURTH AFFIRMATIVE DEFENSE
(Vicarious Liability)**

Plaintiff's claims against ALC fail to the extent that Plaintiff seeks to hold ALC liable, vicariously or otherwise, for the acts or omissions of others.

**FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff failed to mitigate his alleged damages.

**SIXTH AFFIRMATIVE DEFENSE
(Statutory Damages)**

Plaintiff cannot recover from ALC individually for statutory damages on the grounds that any award of statutory damages would be impermissible under the Due Process Clause of the Fourteenth Amendments to the United States Constitution and the Excessive Fines Clause of the Eighth Amendment to the United States Constitution, due to the lack of any actual damages suffered by Plaintiff and the gross disparity between the allegations of harm and the size of the claim. Stating further, any award of statutory damages would violate the constitutional standards enunciated in cases such as *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

**SEVENTH AFFIRMATIVE DEFENSE
(Consent)**

Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff consented to the alleged telephone calls within the meaning of the TCPA.

**EIGHTH AFFIRMATIVE DEFENSE
(Right to Additional Defenses)**

ALC reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

WHEREFORE, Defendant, America's Lift Chairs, LLC, requests that the Court enter an order: (1) dismissing the Complaint with prejudice; (2) awarding ALC its costs and expenses incurred herein; and (3) awarding ALC such other and further relief as the Court may deem just and proper.

1 RESPECTFULLY SUBMITTED this 10th day of December 2021.

2
3 **GOLDFARB & HUCK ROTH RIOJAS, PLLC**

4 /s/ R. Omar Riojas

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18 *Attorney for Defendant America's Lift Chairs, LLC*

CERTIFICATE OF SERVICE

I hereby certify that, on December 10, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties.

DATED this 10th day of December, 2021.

/s/ R. Omar Riojas

R. Omar Riojas, WSBA No. 35400